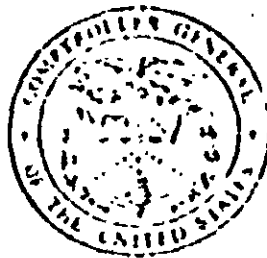


DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: E-205195

DATE: June 17, 1982

MATTER OF: Lloyd E. Clayton & Associates, Inc.

DIGEST:

1. A protester's mere disagreement with the agency's technical evaluation of its proposal does not meet the protester's burden of showing the evaluation is unreasonable.
2. It is within the discretion of the agency to eliminate a lower ranked technically acceptable proposal from the competitive range where meaningful discussions cannot be held with more than one offeror because the agency reasonably believes that the lower ranked proposal cannot be brought up to the level of the superior one, even though a competitive range of one will result.

Lloyd E. Clayton & Associates, Inc., protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. HSA240--BCHS-31(1)DLP issued by the Department of Health and Human Services (HHS) for technical assistance on various health care projects. Two proposals were submitted in response to the RFP. HHS limited the competitive range to, and held discussions with, only one firm, Community Health Management Corp., to which it ultimately awarded a contract.

Lloyd Clayton asserts that its proposal arbitrarily was excluded from the competitive range, thus depriving it of the opportunity to enter into oral or written discussions with HHS for award consideration. Additionally, the protester contends that any proposer under this and other HHS solicitations which, like Community Health,

offered to use a certain subcontractor received preferential evaluation and award consideration due to the influence that that subcontractor allegedly has with HHS.

We deny the protest.

HHS solicited for the services of a contractor to provide a network of professional consultants within HHS Region VII (Iowa, Kansas, Missouri, Nebraska) to Bureau of Community Health Services supported health care projects, National Health Service Corps sites and certain non-Federal health care organizations.

The RFP advised offerors that, for award purposes, evaluation of technical and cost proposals would be of equal value.

Technical proposals were evaluated against the following criteria set forth in the RFP with a point scale indicating their relative importance:

<u>Evaluation Criteria</u>	<u>Point Scale</u>
Experience	30
Personnel	30
Problem and Approach	30
Facilities	<u>10</u>
Total:	100

A summary of the actual technical evaluation scores for the two proposals--broken out according to the scores for the four RFP evaluation criteria and the three individual evaluators (A, B and C)--is shown below:

Community Health

<u>Criteria</u>	<u>A</u>	<u>B</u>	<u>C</u>
Experience	25	25	30
Personnel	28	30	25
Problem and Approach	28	29	30
Facilities	<u>10</u>	<u>10</u>	<u>10</u>
Totals	91	94	95

Average Total: 93.3

Lloyd Clayton

<u>Criteria</u>	<u>A</u>	<u>B</u>	<u>C</u>
Experience	15	19	25
Personnel	20	18	20
Problem and Approach	20	19	25
Facilities	<u>5</u>	<u>8</u>	<u>10</u>
Totals	60	64	80

Average Total: 68

With regard to cost proposals, Community Health offered to perform the work for an estimated cost-plus-fixed-fee of \$236,208. Lloyd Clayton's offer was \$235,446.

HHS reports that Lloyd Clayton's 68 point technical rating was based primarily on the following four major deficiencies the agency found in the proposal: 1) The core team proposed by Lloyd Clayton had little experience in rural health care, family planning, and maternal and child health programs; 2) The proposed core staff had limited clinical experience; 3) Lloyd Clayton's resource pool consultants reside on the east and west coasts, thus limiting their availability to the Region VII midwest area due to travel costs; 4) Lloyd Clayton's proposal did not satisfactorily state the approach which it planned to take in accomplishing tasks in the scope of work, rather it merely repeated portions of the scope of work. These and other deficiencies are noted in the evaluators' individual evaluation sheets..

HHS found that correction of these deficiencies would be possible only by a major revision of the Lloyd Clayton proposal which would require, as a minimum, significant substitution of personnel and a total rewrite of the approach to carrying out the scope of work.

After review of the technical and cost evaluations, the contracting officer determined that while the proposal from Lloyd Clayton was marginally acceptable and thus potentially susceptible of being made acceptable through the negotiation discussion process, it nonetheless did not have a reasonable chance of being selected for award in the face of Community

Health's significantly higher technical score and lower proposed cost. Accordingly, HHS limited the competitive range to the proposal from Community Health, and after discussions made award to that firm.

With regard to the technical evaluation, Lloyd Clayton's only rebuttal to HHS's assessment of the major weaknesses in its proposal consists of bare statements that its proposal did in fact satisfy RFP requirements. Thus, Lloyd Clayton merely disagrees with HHS's technical evaluation. However, because contracting officials are given a considerable range of judgment and discretion in carrying out a technical evaluation, the protester's mere disagreement with the agency's evaluation does not meet the protester's burden of showing that the evaluation was unreasonable. Virginia State University, B-202502, August 12, 1981, 81-2 CPD 129. Therefore, since Lloyd Clayton has provided no bases for us to question the substance of HHS's technical evaluations, and since it is not our function to evaluate technical proposals anew, we will accept, as reasonable, HHS's evaluation findings. See Architectural Preservation Consultants, Resource Analysts, Inc., B-200872; B-200872.4; B-200955.2, December 8, 1981, 81-2 CPD 446.

Notwithstanding the weaknesses HHS found in its proposal, Lloyd Clayton believes that HHS's determination that the proposal was marginally acceptable at least required the agency to include the proposal in the competitive range for written or oral discussions, especially to avoid a competitive range of only one firm. We do not agree. A proposal which is rated as technically acceptable may be eliminated from the competitive range if there is no reasonable chance that it will be selected for award. Hittman Associates, Inc., B-198319, December 17, 1980, 80-2 CPD 437. In other words, if in the contracting agency's judgment meaningful discussions cannot be held with more than one offeror because it reasonably believes that the lower ranked proposal cannot be brought up to the level of the superior one, we have considered that selection to be within the agency's discretion. Art Anderson Associates, B-193054, January 29, 1980, 80-1 CPD 77. We do not believe HHS abused its discretion by holding discussions only with Community Health when the other offeror, Lloyd Clayton, whose proposal was deemed only marginally acceptable, was initially rated more than 25 points lower with more than a \$9,000 higher estimated cost. See Media Works, Inc., B-204602.2, January 19, 1982, 61 Comp. Gen. _____, 82-1 CPD 42. Thus, Lloyd Clayton's protest on this basis is without legal merit.

Finally, Lloyd Clayton's bare allegation that Community Health's offer to use a certain firm as its subcontractor resulted in an improper preferential evaluation treatment by

HHS is not supported by the record. Since Lloyd Clayton has provided no affirmative evidence in support of this allegation of impropriety, it has failed to sustain its burden of proof and therefore we will not consider this matter.

The protest is denied.

for *Harvey R. Williams, C.S.*
Comptroller General
of the United States